Board of Control Meeting Minutes - September 2004

President Jim Sexton convened the regular meeting of the Board of Control on Thursday, September 16, 2004 at 2:00 p.m. All Board members were present except Sally Haebel. Also present were Commissioner Brigid Devries, Assistant Commissioners Larry Boucher, Julian Tackett and Roland Williams, Director of Promotions and Media Relations Butch Cope, Fundraising Consultant Ken Tippett and Office Manager Darlene Koszenski. KHSAA legal counsel, Ted Martin, was also present.

Gary Dearborn had a moment of reflection, followed by the Pledge of Allegiance, led by Assistant Commissioner Larry Boucher.

President Sexton requested that the record show that sixteen out of seventeen Board members were present, and that nine votes were needed to pass any eligibility motions.

L.V. McGinty made a motion, seconded by Lonnie Burgett, to go into Executive Session to discuss pending legal cases with Ted Martin. The motion passed unanimously. L.V. McGinty made a motion, seconded by Chuck Broughton, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

The Board of Control then considered the following appeals in compliance with the KHSAA Due Process Procedure:

- Case #852, 6, Ineligible
  Accept, 16-0
  Ineligible

- Case #855, 6, Ineligible (Exceptions)
  Accept, 16-0
  Ineligible

- Case #856, 6, Ineligible (Exceptions)
  Accept, 16-0
  Ineligible

- Case #844, 6, Reconsider Final Order & Present Oral Argument
  Overturn (McGinty), Parker, 11-3-1
  (Deaton)
  Eligible-C

A-Findings of Fact-Case #853
1. The Board adopts the Findings of Fact in the Hearing Officer’s Recommended Order, except disagrees with any finding that strict application of Bylaw 6, Section 1 (“Bylaw 6) is unfair to student and that the transfer was clearly beyond the control of all involved parties.

Conclusions of Law
Based on the record, the Board concludes as follows:
1. Student’s transfer is subject to Bylaw 6 because he participated in varsity sports at the sending school after enrolling in grade nine and transferred to the receiving school.

2. As concluded by the Hearing Officer, the student’s transfer does not meet a specific, enumerated exception to Bylaw 6.

3. Contrary to the Hearing Officer’s conclusion, the student did not establish that strict application of Bylaw 6 was unfair to him and that the transfer was clearly beyond the control of all involved parties. While the student may have made a legitimate decision to change schools for personal reasons, this decision was not beyond the control of all the parties. In this regard, the student had control over their academic and behavioral problems while at the sending school. Further, the student’s psychologist, in his letter dated February 27, 2004, stated that “[t]he prospect of playing football at the receiving school was a key motivator for the school transfer that has proven so successful...” Thus, while the Board will not prevent the student from transferring to receiving school, they cannot participate in interscholastic athletics for one year from their date of enrollment.
qualified learning disability; (2) no documentation to support a diagnosis of a qualified learning disability and there was no testimony by a physician or other professional to this effect; and (3) no documentation showing the federally mandated services the student claims to be receiving at the receiving school which were not given or offered by the sending school.

Although the primary purposes of Bylaw 6 are to prevent and deter recruiting and athletically motivated transfers, lack of evidence of these dangers is not grounds to waive the application of Bylaw 6. The KHSAA member schools have adopted and the Kentucky courts have approved an objective standard to govern transfers in Kentucky. See Kentuckiana High School Athletic Ass’n v. Hopkins Co, Bd of Educ., Ky.App., 552 S.W.2d 685, 687 (upholding application of Bylaw 6 to a transfer despite the finding that there was no recruiting and the transfer was not athletically motivated). An objective standard is necessary because the inherent administrative and other difficulties make it often impossible to make a subjective determination in the numerous transfers processed each year. If transfers were only precluded if evidence of recruiting or athletic motivation was proved, then Bylaw 6 would be subject to abuse and students would be transferring anytime and anywhere. While the member schools of the KHSAA are not preventing a transfer for subjective personal reasons, they have decided that the student should sit out one year of interscholastic athletics. Thus, although there is no evidence that student transferred due to recruiting or otherwise athletically motivated, Bylaw 6 still applies to his transfer.

L.V. McGinty made a motion, seconded by Steve Parker, to go into Executive Session. The motion passed unanimously. L.V. McGinty made a motion, seconded by Steve Parker, to come out of Executive Session. The motion passed unanimously. No action was taken during Executive Session.

C-Findings & Conclusion-Case #844
The record, including the recommended order along with any exceptions duly filed, was distributed to the members of the KHSAA Board in advance of the meeting. After viewing the videotape of the administrative hearing, listening to oral argument and reconsidering the record, the KHSAA Board voted to UPHOLD the Hearing Officer’s recommended order and overturn the Board of Control’s prior ruling issued on August 30, 2004. Thus, the student is immediately ELIGIBLE to participate in interscholastic athletics at the receiving school. Present for the proceedings were: Jamie Hargrove, Stoll, Keenon & Park; Greg Thornton, Clark & Ward; Lance & Monique Hayden, Parents; Paul Rains & Brad Walls, Lexington Christian Academy. Mr. Seaton asked that the record show that there was no “closed door” meeting with Montgomery County school personnel and Ken Tippett during the process.

President Sexton, Executive Committee Chairperson, then asked the Board to approve the following motions:
1. Lonnie Burgett made a motion, seconded by Ozz Jackson, to approve the Association bills for July 1, 2004 through August 31, 2004. The motion passed unanimously.
2. Stan Hardin made a motion, seconded by Jeff Perkins, to reverse the dates for the Boys' and Girls' Basketball State Championships in 2007, due to a conflict with Rupp Arena and the NCAA. The motion passed unanimously.
3. Donna Wear made a motion, seconded by L.V. McGinty, for staff to proceed with carpet and interior proposals for the office. The motion passed unanimously.
4. President Sexton, Executive Committee Chairperson, then asked the record to show that:
   1. The President's goals and objectives were reviewed.
   2. Staff reported on the Annual Meeting voting procedure.
   3. Commissioner DeVries updated the Board on the Section II meeting, to be held in Louisville on September 26-28, 2004. All Board members are invited to attend.
   4. Paula Goodin, acting Chairperson, Title IX Committee, noted that items from the Committee were discussed with no action taken.
   5. Steve Parker, Chairperson, Museum/Hall of Fame Development Committee, noted that items from the Committee were discussed with no action taken.
   6. Jerry Taylor, Chairperson, Football Committee, asked the Board to approve the following motions:
      2. Ozz Jackson made a motion, seconded by Robert Stewart, for Letcher County Central to be placed in the proper district when the three area schools consolidate in 2005 and immediately be eligible for playoffs. The motion passed unanimously.

Paul Dotson, Chairperson, Constitution and Bylaws Committee, asked the Board to approve the second reading on the following proposals (first reading already considered):
1. Proposals to Amend the Constitution, and Bylaw 23 to clarify KHSAA restrictions for in-state opponents and to codify the Commissioner's ability to handle on a case by case basis, isolated contract issues. A motion was made by Jim Sexton, seconded by Bob Stewart, and passed unanimously.
2. Proposals to Amend the Constitution, and Bylaw 23 to clarify KHSAA restrictions for out of state opponents, codify Commissioner's ability to handle on a case by case basis, isolated contract issues, and restrict play to members of other state associations. A motion was made by Mike Deaton, seconded by Chuck Broughton, and passed unanimously.
3. Proposal to amend Bylaw 6, Section 1, to make minor adjustments to the definition of a bona fide change of address. A motion was made by Jeff Perkins, seconded by Donna Wear, and passed 15-1.
4. Proposal to amend Bylaw 6, Section 1, to eliminate the state testing exception from the transfer rule on advice from counsel and after consultation with Department of Education Officials. A motion was made by Ozz Jackson, seconded by Chuck Broughton, and passed unanimously.
5. Proposal to amend Bylaw 6, Section 1 to allow for a waiver of the period of ineligibility for those students who did not participate in interscholastic athletics during the immediately preceding school year, whether at the sending or receiving school. A motion was made by Chuck Broughton, seconded by Stan Hardin, and passed unanimously.
6. Proposal to amend Bylaw 6, Section 2, to place in the rule the restriction on direct placement of students and restrictions on excessive assistance by host families. A motion was made by Jeff Perkins, seconded by Stan Hardin, and passed 15-1.
7. Proposal to amend Bylaw 16 to require the submission of requests for investigation and violations of rules to be in writing. A motion was made by Lonnie Burgett, sec-
Board of Control Meeting Minutes - September 2004

onded by Donna Wear, and passed unani-
mously.
8. A motion was made by Ozz Jackson, 
seconded by Stan Hardin, to send out all 
the proposals to schools with the October 
Commissioner’s Notes. The motion passed 
unanimously.

L.V. McGinty, Chairperson, Officials 
Policy Committee, asked the Board to ap-
prove the following motions:
1. Lonnie Burgett made a motion, sec-
onded by Jerry Taylor, to set a minimum 
$40 fee for Swimming officials effective for 
the 2005-2006 season. For invitational 
meets or those with four or more schools 
entered, the fee shall be $60 per official. 
Beginning in 2005-2006, the fee for offici-
ating regional swim meets shall be a mini-
mum of $65 plus applicable travel for offi-
cials. The motion passed unanimously.
2. Lonnie Burgett made a motion, sec-
onded by Mike Deaton, that beginning in 
2005-2006, the fee for officiating a standard 
school day or half-day (3 hours or less) 
weekend Track meet shall be a minimum 
of $45 per division for the two licensed of-
cials (Referee & Starter) For larger meets 
that require longer than three hours, the fee 
shall be $65 per official for the two licensed 
officials (Referee & Starter). If additional 
referees are hired at the discretion of the 
meet management, they shall receive the 
same fee. Beginning in 2005-2006, Re-
gional Track meet assigned officials shall 
be paid a minimum fee of $65 per classifi-
cation. Beginning in 2005-2006, the fee for 
officiating a standard Cross Country meet 
shall be a minimum of $30 per race for the 
Meet Referee, who shall be a licensed 
Track and Field Official. If additional refer-
rees are hired at the discretion of meet man-
agement, they shall receive the same fee. 
Beginning in 2005-2006, Cross Country 
Regional meet assigned officials shall be 
paid a minimum fee of $35 per race. The 
motion passed unanimously.
3. Bob Stewart made a motion, seconded 
by Lonnie Burgett, effective with the 2005-
2006 season, for Volleyball officials to re-
ceive $37.50 per match during regular sea-
son; $42.50 per match during district com-
petition (in the case where an official is re-
quired to travel outside of the local assign-
ing area by virtue of the assignments, the 
fee shall be increased by $5 per person, 
per contest); $47.50 per match during re-
gional competition (in the case where an 
official is required to travel outside of the 
local assigning area by virtue of the assign-
ments, the fee shall be increased by $5 per 
person, per contest); and, state tournament 
oficials shall be paid $52.50 per contest. 
The motion passed unanimously.

Mr. McGinty, noted for the record that 
discussing a flat fee for post-season play 
eliminating mileage reimbursement, would 
be taken off the agenda as a discussion 
item.

President Sexton then called the Board’s 
attention to miscellaneous items listed for 
their information only. 1) Confirm date for 
the Special Board Meeting in October to 
consider August and September appeals; 2) 
Review dates for the next regular Board 
of Control Meeting, November 17-18th in 
Lexington; 3) Miscellaneous Board and staff 
items.

Since there are 33 appeals to consider, 
a special called meeting is necessary, and 
is scheduled for Thursday, October 21st at 
8:30 a.m.

Commissioner DeVries reminded the 
Board that Assistant Commissioner Tackett 
was compiling the responses and sugges-
tions regarding the draft basketball re-align-
ment, and that the committee will meet at the 
November meeting.

She also requested that FACTS be 
added to the November agenda for con-
sideration as a financial aid agency.

Mike Dailey stated that the Kentucky 
Board of Education is reviewing nominees 
for a replacement for Cynthia Elliott.

Assistant Commissioner Roland Wil-
lams asked that Boys’ and Girls’ State Soc-
cer Site Proposals be presented at the No-

dember meeting.

There being no further business to come 
before the Board, Paul Dotson made a 
motion to adjourn. The motion was sec-
onded by Donna Wear, and passed unani-
mously. The meeting adjourned at 4:40 
p.m.